STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 1, 2007
v	No. 264417 Livingston Circuit Court
RONALD RAY CREAGER II, Defendant-Appellant.	LC No. 05-014889-FH

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of possession of marijuana, MCL 333.7403(2)(d), second offense, MCL 333.7413(2), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that insufficient evidence supported his conviction because the prosecutor offered no evidence that the substance defendant possessed contained THC, the main psychoactive chemical in marijuana. See *People v Derror*, 475 Mich 316, 325; 715 NW2d 822 (2006). Defendant's argument involves primarily an issue of law, which we review de novo. *In re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999).

> MCL 333.7106(3) defines marijuana, or "[m]arihuana," as:
> all parts of the plant Cannabis sativa L., growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

Defendant cites nonbinding opinions indicating that marijuana laws were intended to prohibit all plant parts *containing THC*. See, e.g., *People v Riddle*, 65 Mich App 433, 436-437; 237 NW2d 491 (1975), and *United States v Walton*, 514 F2d 201, 202 (DC, 1975). However, this does not

mean that Congress or the state legislature intended to require proof, specifically, of THC.[1] When a statute is unambiguous, courts must not engage in judicial construction. *In re MCI*, *supra* at 411. The express language of the statute at issue here does not require specific proof of THC. The trial court did not err when it found no requirement that the prosecutor prove the presence of THC. The evidence established that the substance defendant possessed was not part of the plant excluded from the definition of marijuana. See MCL 333.7106(3).

Defendant also argues that the prosecutor was required to prove that the substance was the specific marijuana species prohibited by MCL 333.7106(3). However, many courts have rejected that argument. See, e.g., *Riddle*, *supra at* 437-439; *United States v Sanapaw***,** 366 F3d 492, 495 (2004). Regardless, defendant offered no evidence that any similar species existed or that the witnesses' identification of the substance as marijuana encompassed another plant species not included in the definition of marijuana. A party cannot introduce evidence on appeal that was not presented to the trial court. *Kent County Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 580; 609 NW2d 593 (2000), aff'd sub nom *Bryne v State*, 463 Mich 652 (2001).

Finally, defendant challenges the admission of expert testimony by a forensic scientist who provided the results of two tests he conducted on the material and who opined that the material was marijuana. MRE 702 states:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

In *Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 US 579, 593-594; 113 S Ct 2786; 125 L Ed 2d 469 (1993), the Supreme Court set forth considerations that are relevant to determining whether a theory or technique should be admissible: whether it has been tested; whether it has been subjected to peer review and publication; what the potential rate of error is; and whether it is widely accepted in the scientific community. This inquiry is flexible. *Id.* at 594; *Kumho Tire Co, Ltd v Carmichael*, 526 US 137, 141; 119 S Ct 1167; 143 L Ed 2d 238 (1999).

Here, the witness testified that he followed state police procedure and that, taken together, the two tests were widely accepted as being accurate in testing for marijuana. The witness had no documents supporting his assertion that the tests were widely accepted, did not know exactly why the color test worked, and did not offer any evidence of accuracy rates. However, defendant's only evidence contradicting the witness's claim of wide acceptance was a

[1] We note that the record presented to the *Riddle* Court indicated "that [THC] is found in all the so-called species of marihuana." *Riddle*, *supra* at 436.

document claiming one state used an additional test, and an opinion, without explanation, from a toxicologist with no known expertise in analyzing bulk materials.

The trial court properly exercised its discretion when it admitted the expert testimony and the tests results. See *People v Matuszak*, 263 Mich App 42, 47; 687 NW2d 342 (2004). Further, contrary to defendant's assertion on appeal, the test results were not the only evidence on which the trial court based its verdict. A state trooper identified the pipe and material based on extensive experience and also testified that defendant admitted that the material was marijuana. The cumulative evidence was sufficient for the trial court to find guilt beyond a reasonable doubt.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis